

TEXAS DEPARTMENT OF PUBLIC SAFETY

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COMMISSION
STEVEN P. MACH, CHAIRMAN
A. CYNTHIA LEON
JASON K. PULLIAM

RECEIPT FOR HAND DELIVERY

Date: June 10, 2019

To: Office of the Attorney General
Open Records Section

From: Albert DiMarco
Office of General Counsel
Texas Department of Public Safety

RE: Public Information Request for (the hacker movement/collective, see below) or
hacktivism (defined as hacking as a form of protest and/or activism) generated between
1 January 2009 and 1 January 2019 (PIR # 19-2299)

Acknowledgement of Delivery:

Name

Date and Time of Delivery:

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June 10, 2019

Via Hand Delivery

Attorney General of Texas
Open Records Division
209 West 14th Street, 6th Floor
Austin, Texas 78701

RE: Public Information Request for (the hacker movement/collective, see below) or hacktivism (defined as hacking as a form of protest and/or activism) generated between 1 January 2009 and 1 January 2019 (PIR # 19-2299)

DATE REQUEST FOR INFORMATION RECEIVED:

5/30/2019

DATE REQUEST FOR RULING SUBMITTED TO ATTORNEY GENERAL:

6/10/2019

Dear Open Records Division:

The Department of Public Safety received the above-referenced request for information from on May 30, 2019. We believe some or all of the requested information is excepted from required public disclosure pursuant to section 552.101 and 552.108(b)(1) of the Government Code. Accordingly, we are requesting a ruling regarding the release of these records. Some of the requested documents are publically releasable and those documents have been released to the requestor.

Section 552.101 of the Government Code states that “[i]nformation is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses section 418.177 of the Government Code, which states:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Critical infrastructure is defined as “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation.” Gov’t Code § 421.001(2).

Section 552.101 encompasses section 418.180 of the Government Code, which states:

Information, other than financial information, in the possession of a governmental entity is confidential if the information:

- (1) is part of a report to an agency of the United States;
- (2) relates to an act of terrorism or related criminal activity; and
- (3) is specifically required to be kept confidential:
 - (A) under Section 552.101 because of a federal statute or regulation;
 - (B) to participate in a state-federal information sharing agreement; or
 - (C) to obtain federal funding.

Section 552.101 encompasses section 418.181 of the Government Code, which states that “documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.” Critical infrastructure is defined as “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation.” Gov’t Code § 421.001(2).

Furthermore, The Department believes this information is excepted from required public disclosure pursuant to section 552.108(b)(1) of the Government Code, which states:

- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
 - (1) release of the internal record or notation would interfere with law enforcement or prosecution.

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). Your office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (predecessor to section 552.108 is designed to protect investigative techniques

and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime maybe excepted).

Release and disclosure of the submitted records would reveal techniques used to identify potential threats to public safety. These techniques are used to detect information that is established by criminal predicate and then passed to investigators in the field as leads to ongoing crimes being committed, in the planning stage or criminal conspiracies (such as public disruptive threats, ongoing fraud, active shooters, etc.) that are evolving. Disclosure of these techniques would provide specific information that would hamper this ability currently and in the future in regard to public safety threats and criminal organization groups and individuals.

In addition, these records detail ongoing operations by the Department and other law enforcement agencies to detect, prevent, and respond to terroristic threats and other criminal activities. These records include details of staffing and equipment utilized for these operations and strategies employed in these operations. The records also include information on previous operations that are used to assess ongoing and future risks to persons and property in these areas, and are maintained by the Department for this purpose. Revealing these records would provide wrong-doers, computer-based syndicates, anarchists, terrorists, and other criminals with invaluable information concerning the law enforcement efforts, allowing these groups to identify vulnerabilities and avoid detection. This information is also utilized by the Department for planning and deployment of resources, and release of the requested records would reveal confidential staffing requirements and tactical plans of the Department and other law enforcement agencies during this ongoing operation, endangering the safety of both law enforcement personnel and the public in these areas. Therefore, the Department believes the submitted records are confidential and excepted from required public disclosure in their entirety under sections 552.101 and 552.108 of the Government Code.

Please find enclosed the request from MuckRock News, the notice of our request for a ruling sent to the requestor, and the responsive records we wish to except from required disclosure. Please feel free to contact me at (512) 424-2890 if you have any questions.

Sincerely,

Albert DiMarco

Albert DiMarco
Assistant General Counsel

Enclosure(s)

cc:

MuckRock News
74459-52088672@requests.muckrock.com